importing it into paragraph (2) of Order 14, rule 1 of the Rules of the Supreme Court of Singapore, 1970, which do not, and it must be presumed intentionally do not, contain any such exception.

In their Lordships' opinion there is another ground additional to the other grounds already dealt with by them in this judgment, and not adverted to at any time in the previous course of the proceedings, on which the shipowners' appeal is bound to fail. By the law of England, once a defendant in an Admiralty action in rem has entered an appearance in such action, he has submitted himself personally to the jurisdiction of the English Admiralty Court, and the result of that is that, from then on, the action continues against him not only as an action in rem but also as an action in personam: *The Gemma*[1] per A.L. Smith L.J. at page 292. There is no reason to suppose that the Admiralty law of Singapore differs from the Admiralty law of England so far as this important principle is concerned. On the contrary there is every reason to suppose that it is the same. If then that principle is applied in the present case, the situation is that, from the time when the shipowners entered an appearance in the master's action, as they did on February 2, 1978 the action continued not only in rem against the property proceeded against, namely, the ship, but also in personam against the shipowners themselves. It follows that even if, contrary to the views which their Lordships have earlier expressed, an Admiralty action in rem were excluded from the scope of Order 14, it would in any case be impossible to regard an Admiralty action in personam as similarly excluded. Insofar therefore as, from the time of the shipowners' appearance, the master's action continued against them as an action in personam as well as an action in rem, it was clearly a kind of action to which Order 14 applied.

For all the various reasons which their Lordships have given the shipowners' appeal fails and must be dismissed with costs.

Appeal dismissed.

Solicitors: *Ince & Co.; Lloyd Denby Neal*

SINGAPORE REPORTS

BANK OF AMERICA NATIONAL TRUST SAVINGS ASSOCIATION v. CHEONG HOON CHONG

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) April 23, 1982]
[Singapore – Civil Appeal No. 101 of 1980]

Bankruptcy – Charge stamped up to $140,000 – Charge discharged – Claim for further sum of $70,454.43 – Claim disallowed by trial court – Appeal – Outstanding debts on a simple contract – Appeal allowed.

Banking – Overdraft and trust receipt facilities – Debt owing in respect of – Limitation Act (Cap. 10), s. 26(2).

This was an appeal from the decision of the trial court (see [1981] 2 M.L.J. 303) dismissing the claim by the appellants/ plaintiffs against the respondent/defendant for the sum of M$70,454.43 being the unsatisfied portion of a debt owing to the appellants in respect of overdraft and trust receipt facilities secured by a charge on property.

The plaintiffs were bankers and they granted the defendant and one Lao Kee Yam trading as Sharikat Alpha Associates overdraft and trust receipt facilities. The overdraft and trust facilities were secured by a registered charge dated November 21, 1969. The said charge was to secure up to M$140,000 the credit facilities granted to Sharikat Alpha Associates. Lao became bankrupt on April 25, 1971. In March 1973 the plaintiffs commenced foreclosure proceedings. In May 1973 the plaintiffs received M$140,000 from the Official Assignee on the understanding that the charge would be discharged by the plaintiffs.

The plaintiffs claimed for a further sum of M$70,454.43 under the Clause 21 of the charge. The learned trial judge dismissed the claim on the ground that the said charge was only stamped up to M$140,000 and in such circumstances, the chargors were only liable up to the amount covered by the stamping and no more. The plaintiffs appealed against the said decision.

Held, allowing the plaintiffs' appeal: (1) the merger of a simple contract debt into a specialty debt depended on the intention of the parties, which is to be gathered from the documents they have signed. Clause 21 of the charge clearly indicated that there was to be no merger and the contractual rights of the plaintiffs as against the defendant were preserved. When the charge was discharged the outstanding indebtedness of the defendant on a simple contract remained;

(2) the plaintiffs' claim was not barred by limitation as there was an acknowledgement of the debt by the defendant addressed to the Official Assignee and dated April 1973. A carbon copy of the said letter was sent to the plaintiffs' solicitors by the defendant's solicitors who had the authority to act on the defendant's behalf. The said letter constituted a good acknowledgement within the Limitation Act.

Cases referred to:

(1) *Barclays Bank Ltd.* v. *Beck* [1952] 2 Q.B. 47.

(2) *In re Compania de Electricidad De La Provincia De Buenos Aires Ltd.* [1979] 2 W.L.R. 316,351.

COURT OF APPEAL.

Peter Mooney (*David Wee* with him) for the appellants/plaintiffs.

K.C. Yeo for the respondent/defendant.

Cur. Adv. Vult.

Chua J. (delivering the Judgment of the Court): This appeal arises from a judgment of Rajah J. dismissing the claim by the Appellants (Plaintiffs) against the Respondent (Defendant) for the payment of the sum of M$70,454.43 being the unsatisfied portion of a debt owing to the Appellants in respect of overdraft and trust receipt facilities secured by a charge on property.

At the conclusion of the hearing of the appeal we allowed the appeal and now give our reasons.

The facts were not in dispute. The Plaintiffs are bankers carrying on business at their branch at Kuala Lumpur, Malaysia, and elsewhere. The Defendant and one Lao Kee Yam trading as Sharikat Alpha Associates were at all material times customers of the Plaintiffs at the said branch at Kuala Lumpur and were granted overdraft and trust receipt facilities. The overdraft and trust receipt facilities were secured by a registered Charge dated November 21, 1969, (the Charge) over land in the Mukim of Damansara in the District of Kuala Lumpur, which Charge was created by the Defendant and his partner Lao Kee Yam, co-owners of the property. The Charge was to secure partially up to M$140,000.00 the credit facilities granted to Sharikat Alpha Associates.

Lao Kee Yam became a bankrupt on the April 25, 1971. In March, 1973, due to the non payment of the amount due to the Plaintiffs by the Defendant and Lao Kee Yam under the overdraft and trust receipt facilities the Plaintiffs proceeded to realise the security held under the Charge of commencing foreclosure proceedings. In about May, 1973, the Plaintiffs received the sum of M$140,000 from the Official Assignee, Kuala Lumpur, who paid this amount for and on behalf of the Defendant and the bankrupt Lao Yee Yam, which payment was made on the understanding that the property subject to the Charge would be discharged by the Plaintiffs and the title deed and the registrable discharge given to the Official Assignee.

The Plaintiffs' claim against the Defendant (who lives in Singapore) was for the payment of the sum of M$70,454.43 under clause 21 of the Charge particulars whereof were set out in the Amended Statement of Claim.

Clause 21 of the Charge provides:

> "If on realisation of this security under the National Land Code the amount recovered on the sale of the land hereby charged is less than the amount due under this Charge the chargee notwithstanding that the chargee may be the purchaser thereof at such sale shall be entitled to recover from the chargor any difference between the amount due herein and the amount so realised and until such deficit is paid by the chargor shall be entitled to charge interest on such balance due at the rate aforesaid until the date of final payment."

The learned trial Judge in his Judgment said that Clause 21 had to be looked at carefully as the Plaintiff's claim was based solely on that clause. After considering the Clause he came to the following conclusion:

> "From a reading of this clause it is quite apparent that what this clause deals with is a situation where the amount recovered on the sale of the property charged is less than the amount due under the Charge. In the instant case it is not disputed that the Charge was only stamped up to $140,000/- and the law is clearly established that, in such circumstances, the chargor or chargors is or are only liable up to the amount covered by the stamping and no more. *(In re. Waterhouse's Policy* [1937] 1 Ch. 415). From this it must follow that the Plaintiffs' claim must stand dismissed with costs. Perhaps had the action been against the Defendant, as partner in a firm to which the Plaintiff Bank had lent monies without security, the presentation and arguments addressed to me might well have been different."

Counsel for the Defendant in support of the learned trial Judge's finding submitted that the right of the Plaintiffs to claim the sum of $70,145.53 due in respect of overdraft and trust receipt facilities on the ordinary relationship of banker and customer had been merged in to their right under the covenant contained in the Charge and that the Charge and all liabilities under it having been discharged, including the obligation to pay the overdraft and trust receipts, the Plaintiffs had no claim.

With all due respect to the learned trial Judge, it seemed to us that he had misunderstood Clause 21. The merger of a simple contract debt into a specialty debt depended on the intention of the

parties, which is to be gathered from the documents they have signed. (see *Barclays Bank Ltd.* v. *Beck*[1]). Clause 21 of the Charge clearly indicated that there was to be no merger and the contractual rights of the Plaintiffs as against the Defendant were preserved. When the Charge was discharged the outstanding indebtedness of the Defendant on a simple contract remained.

Then counsel for the Defendant contended that the Plaintiffs' claim was barred by limitation. The answer of the Plaintiffs was that there was an acknowledgement of the debt by the Defendant in April, 1973.

The evidence was that the Defendant's solicitors, A.K. Lee & Co. of Kuala Lumpur, wrote the following letter on the April 5, 1973, to the Official Assignee, Malaysia (Ex. P9), (the letter):

"Tuan,

Re Lao Kee Yum a bankrupt

We act for Mr. Cheong Hoon Chong who is co-proprietor with the abovenamed bankrupt of a piece of land with a factory erected thereon and held under Q.T. (R) 3955 for Lot 18/68 Mukim of Damansara, District of Kuala Lumpur.

The aforesaid land is charged in favour of Bank of American National Trust and Saving Association and the amount outstanding to-date is $206,029.69. We understand that you are in process of selling the said bankrupt's half share in the said land for redemption of the said charge.

Kindly withhold further action in the proposed sale as our client is able to obtain a better offer for the said land."

A carbon copy of the letter was sent to the Plaintiffs' solicitors in Kuala Lumpur and also to the Defendant.

The Defendant said in evidence regarding the letter "I did not specifically authorise him (the solicitor) to enter appearance for me but I did give him general authority to act on my behalf. I have received a carbon copy of letter. I did not do anything about it."

Counsel for the Defendant submitted that the letter was not an acknowledgement of the debt within section 26(2) of the Limitation Act (Cap. 10). He said that the letter was not addressed to the Plaintiffs but to the Official Assignee; that the Official Assignee was not the agent of the Plaintiffs and that A.K. Lee & Co. did not have the express authority of the Defendant to send a carbon copy of the letter to the Plaintiffs solicitors.

Under Section 27 (2) of the Limitation Act an acknowledgement "may be made by the person by whom it is required to be made under that section (section 26)" and to be effective it has to be "made to the person, or to an agent of the person, whose title or claim is being acknowledged." *In re Compania de Electricidad De La Provincia De Burnos Aires Ltd.*[2] Slade J. said (at page 351):

"In my judgment,..., a written acknowledgment cannot be said to be 'made to' a creditor or his agent, within the meaning of Section 24(2), (which is similar to Section 27 (2) of our Limitation Act) unless either (a) it is delivered to the creditor or his agent by or with the authority of the debtor or his agent or (b) it is expressly or implicitly addressed to and is actually received by the creditor or his agent.

In my judgment, in case (a) it would not matter that the acknowledgement was not, according to its terms, expressly or implicitly addressed to the recipient. In case (b) it would not matter that the acknowledgment reached the hands of the creditor otherwise than by or with the authority of the debtor. In either case, however, it would be necessary that the creditor should actually receive the acknowledgment before he could rely on it."

In the present case it is true that the letter was addressed to the Official Assignee who was not the agent of the Plaintiffs. However, in the letter there was an express acknowledgment of the debt to the Plaintiffs and a carbon copy of it was sent to the Plaintiffs' solicitors by the Defendant's solicitors who had the authority to act on the Defendant's behalf. In our view the letter constituted a good acknowledgment within the Limitation Act.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Yeo Kee Chin & Co.*

LIEW AH SOO v. TAN HIAP HUI; NEW TOWN DEVELOPMENT (PTE.) LTD v. TAN HIAP HUI

[O.C.J. (Sinnathuray J.) December 23, 1981]

[Singapore – Originating Summons Nos. 121 & 459 of 1982]

Land Law – Caveat – Removal of – Application for – Caveator failed to show cause for caveat to remain in force.